



An
Bord
Pleanála

Inspector's Report ABP-313759-22

Development	To construct a split-level dwelling house and garden shed together with all associated site development works and connections to public services
Location	Radharc Na Mara, Lahinch, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	22249
Applicant(s)	Brian & Joann Foudy
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Brian & Joann Foudy
Observer(s)	1. Michael Leahy on behalf of Residents 2. Bert Gleeson 3. Thomas & Kay Ryan
Date of Site Inspection	25 th January 2023
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site is located in the south-eastern part of the town of Lahinch in west County Clare. The site is on elevated land and overlooks Lahinch town centre. It is presently under grass and forms part of the Radharc na Mara housing development. Radharc na Mara comprises 55 no. houses with a mixture of single storey and dormer houses. The site is at the northern end of a cul de sac within this housing estate. The six houses (no.'s 45-50) within this cul de sac are single storey in design. There is a row of two-storey houses to the north of the site within a housing development known as Ard na Mara. The site is accessed from the public road to the south, known as School Road. This road runs east-west to/from the waterfront in the town of Lahinch.
- 1.2. The site itself is of irregular shape and it extends from the hammer head at the northern end of the cul de sac towards the west along the side of No.47 Radharc na Mara and to the rear of house No.'s 4, 4a and 5 Ard na Mara. This site slopes downwards from its south-eastern side (39m OD) to the north-west (33.772m OD) and it has a stated area of 0.096 hectares. The southern site boundary is open adjacent to the cul de sac, and the middle section of this boundary is comprised of a low concrete panel fence shared with No.47 Radharc na Mara. The northern site boundary comprises a low hedge on its easternmost part and a c.1.2m high concrete post and wire mesh fence along the length of the shared boundary with the houses in Ard na Mara.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a split-level detached dwelling house and a domestic garage on the site at Radharc na Mara, Lahinch, Co. Clare. The house would form part of the Radharc na Mara housing development.
- 2.2. The proposed house is split-level in design facilitated by the slope on the site. The proposed house has a floor area of 146.1m² and a ridge height of 7.561m over finished floor level, with render finish, some stone cladding and black slates / tiles and some zinc / pressed metal cladding on a flat roof section. A landscaping plan is proposed and part of this involves the planting of hedge along the southern site

boundary to be maintained at a height that would maintain existing views from Radharc na Mara.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated 22nd April 2022 Clare County Council issued a notification of decision to Refuse Permission for the proposed development for the following reason:

Under the Clare County Development Plan 2017-2023, as varied, the subject site is zoned as 'existing residential', the objective for which is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill developments which are appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Having regard to the topography and elevated nature of the site relative to the Ard na Mara estate to the northwest, it is considered that the proposed development by reason of its siting and design will overlook the rear private spaces of the dwellings at Ard na Mara, and thus seriously injure the amenities of these properties. Furthermore, having regard to the established use of the site as an amenity space it is considered the proposal would set an undesirable precedent for other such proposals and detract from the residential amenities of the area. The proposed development would therefore be contrary to the proper planning and development of the area and would contravene the zoning objective for the site as 'existing residential'.

3.2. Planning Authority Reports

3.2.1. **Planning Report**

The Planning Officer in the report on file dated 12th May 2022 outlined the planning policy, planning history, consultations, third party submissions, and highlighted concern that the established use of the site was a green amenity area and that the proposed house would overlook the rear private spaces of houses to the north at Ard na Mara. The report recommended that permission should be refused, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

3.2.2. **Other Technical Reports**

Area Office – No observations to make.

3.3. **Prescribed Bodies**

Irish Water – Confirm that there is no public distribution main at this location. State that the existing watermain that runs through the property is a dedicated rising main supply to the adjacent storage reservoir, to be diverted / protected. Recommend that further information is sought to ascertain if a third-party agreement is possible to connect to the water supply main in Radharc na Mara housing development.

3.4. **Third Party Observations**

Submissions were received from John Corry, Jon Villareal Uriarte, Bert Gleeson, Thomas & Kay Ryan, Barry & Siobhán Cudmore, Joe Danagher, Seamus & Collette Duggan, and Terence Clancy. The issues raised are generally similar to those referenced in the observations made on the appeal. These include concerns regarding the stability of the site, drainage, density, overlooking, impact on wildlife / wildflower area, and contravention of previous permission issued under P.A. Ref. No. 98/41.

Cllr. Shane Talty also made representations on the planning application.

4.0 **Planning History**

4.1. **Appeal site:**

PL03.102735 (P.A. Ref. No. 96/620): Permission refused for 64 houses for the following reason:

The development would contravene materially a development objective indicated in the current development plan for the area which designates the site as an area reserved primarily for the provision of dwellings for permanent occupancy. This

designation is considered to be reasonable. The proposed development would, therefore, be contrary to the proper planning and development of the area.

PL 04.110754 (P.A. Ref. No. 98/41): Permission granted for 55 houses.

P.A. Ref. No. 04/1405: Permission granted for extension of duration for 55 houses.

4.2. Site to the southwest:

PL 03.222918 (P.A. Ref. No. 06/1530): Permission refused for a house at 55A Radharc na Mara for the following reasons:

1. Having regard to the restricted nature of the site, the scale of the proposed dormer dwelling, its proximity to the adjacent hammerhead and the elevated nature of the site to the south, it is considered that the proposed development would have an overbearing impact on the dwelling to the rear, would seriously injure the residential amenity for its future occupiers and would set an undesirable precedent for similar development in the area. The proposed development would seriously injure the amenities of the area and of property in the vicinity, would contravene Policy H15 of the Lahinch Local Area Plan and the Clare County Development Plan 2005 and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the erection of a dwelling, within 2 metres of an existing turning area, by reason of general disturbance and pedestrian / vehicular conflict would fail to provide adequate amenity to future residents and would endanger public safety by reason of traffic hazard. The proposed development, would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Clare County Development Plan 2017-2023

- 5.1.1. Ennistymon/Lahinch is designated as a service town in the Development Plan. The appeal site has a land use zoning of 'Existing Residential'. The plan states that the "objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities."

Objective CDP3.3: Service Towns

It is an objective of the Development Plan:

To ensure that the Service Towns in County Clare are drivers of growth and prosperity for their respective catchments, by consolidating their administrative, retail and service bases, protecting and enhancing their distinctive town centre characteristics and natural landscape settings, and maximising their role for subregional growth.

- 5.1.2. A **General Objective** in the Settlement Plan is 'to facilitate a permanent resident population to ensure the sustainable growth of Lahinch'.

- 5.1.3. The appeal site has a land use zoning of '**Existing Residential**'.

The objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained

5.2. Natural Heritage Designations

The site is not located within any European site. The closest Natura 2000 sites are the Inagh River Estuary SAC (Site code: 000036) and the Cliffs of Moher SPA (Site

code: 004005) located approximately 600m to the north and 8.5km to the west, respectively.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, its location within a serviced village setting, and separation from sensitive environmental receptors, I am satisfied that no likely significant impacts on the environment arise from the proposed development and that the carrying out of an EIA is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of the appeal are submitted by Brian Foudy & Associates Limited, Osprey House, Carmody Street, Ennis, Co. Clare on behalf of the first parties, Brian & Joann Foudy and the main points made can be summarised as follows:

- Contends that the site section (Drawing no.: 2150(A)02 refers) clearly demonstrates that the proposed split-level design will not interfere with the rear private spaces of the adjoining houses in the Ard na Mara development.
- Contends that it is not clear whether the appeal site formed part of the development permitted under P.A. Ref. No. 98/41 and even if it was it would now be statute barred from being enforced as part of the public open space associated with the housing development permitted under that planning application.
- States that the Lahinch Settlement Plan clearly shows the appeal site as Existing Residential.
- Contends that if the balcony area was a concern Clare County Council could have requested an amendment as part of a further information request rather than an outright refusal.
- Includes a shadow study with the appeal confirming that shading won't be an issue.

- Contends that the application was incorrectly adjudicated upon as an amenity space and that a refusal was made based on inaccurate or missing files.
- Cites other terraced and tiered houses developed in Lahinch.
- Clarifies a number of matters in relation to the site description, legal consent, planning history, traffic issues, and public health.
- States that they have no objection to move the proposed garden shed as requested by one of the observers on the appeal.

6.2. Planning Authority Response

The Planning Authority states that they have no further comments to make on the appeal.

6.3. Observations

1. Leahy Planning Ltd., Mill Road House, Mill Road, Ennis, Co. Clare on behalf of Joe Danagher, Terence Clancy, Seamus & Collette Duggan, and Barry & Siobhán Cudmore and the main points made can be summarised as follows:

- Contends that the land use zoning cannot be taken as giving consent to a breach of conditions of a previous permission (P.A. Ref. No. 98/41 refers).
- Includes photographs of copies of drawings indicating the appeal site as open space.
- States that the appeal site is in use as an area of open space.
- Contends that it was likely that the appeal site was not developed as a residential site within the original housing development because it would have been overbearing on the houses to the north.
- Contends that allowing a development to directly overlook the rear garden of another house would constitute an undesirable precedent.
- Contends that it is less than entirely desirable to allow access directly off a turning area.

- Rejects the suggestion by the First Party that any form of intimidation was brought to bear on any person to make a submission on the planning application.
2. Bert Gleeson, 5 Ard na Mara, Lahinch, Co. Clare and the main points made can be summarised as follows:
- Contends that the proposed development will cause unacceptable overlooking of his back garden.
 - Concerned that groundworks may have a destabilising effect on the appeal site.
3. Thomas & Kay Ryan, 4a Ard na Mara, School Road, Lahinch, Co. Clare and the main points made can be summarised as follows:
- Contends that the proposed development will overlook their property.
 - Contends that due to the steeply sloping nature of the site, the proposed development is likely to cause damage by erosion and flooding and are concerned that the scale of the development may destabilise the rear of their site.
 - States that the appeal site is a designated green area.
 - A photograph of the rear garden of their house taken from the appeal site is included with the observation.

7.0 Assessment

I consider that the main issues in the assessment of this appeal are as follows:

- Principle of Development
- Overlooking
- Other Issues
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. Under the appeal, the first parties contend that it is not clear whether the appeal site formed part of the development permitted under P.A. Ref. No. 98/41 and even if it was it would now be statute barred from being enforced as part of the public open space associated with the housing development permitted under that planning application. They also state that the Lahinch Settlement Plan clearly shows the appeal site as 'Existing Residential'.
- 7.1.2. One of the observers contends that the land use zoning cannot be taken as giving consent to a breach of conditions of a previous permission (P.A. Ref. No. 98/41 refers). The observer includes photographs of copies of drawings indicating the appeal site as open space and states that the appeal site is in use as an area of open space.
- 7.1.3. Under the Clare County Development Plan 2017-2023 (as varied), the appeal site has a land use zoning of 'Existing Residential'. As stated earlier in this report, the objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities.
- 7.1.4. The Board should also note that this land use zoning is intended to be carried forward within the Lahinch Settlement Plan under the review of the current

development plan.¹ Under this land use zoning a single dwelling is ‘open to consideration’ i.e., subject to particular considerations for example, compatibility with adjoining uses, scale or whether or not the proposal is prejudicial to the amenities of an area or the residential amenities of an adjoining property.

- 7.1.5. I have also reviewed the planning history on the site and note the Planning Authority’s reason for refusal. Having regard to the established use of the site as an amenity space, the Planning Authority considered the proposal would set an undesirable precedent for other such proposals and detract from the residential amenities of the area and concluded that the proposed development would contravene the ‘Existing Residential’ zoning objective for the site.
- 7.1.6. On the day of my site inspection, I noted that the appeal site was open and accessible to the public and was not contained within the curtilages of the adjacent houses i.e., no.’s 47 and 48 Radharc na Mara. In this regard, I also refer the Board to the site layout plan on PL03.102735, which clearly references the appeal site as public open space associated with the overall residential development of Radharc na Mara. Although in an unkept state, I am satisfied from both my observations and the planning history of the appeal site that the appeal site formed part of the public open space associated with the housing development at this location.
- 7.1.7. I also note that the area where the reservoir is located immediately to the south of the appeal site has a land use zoning of ‘Existing Residential’ under both the current and future development plans, is currently also under grass, but obviously could not be developed for residential use. Similarly, the open space area at the front of the Radharc na Mara housing development has a land use zoning of ‘Existing Residential’ but clearly forms part of the public open space permitted under the parent permission and I consider would not form part of any future proposals for the development of additional housing.
- 7.1.8. On the basis of the above, I do not consider that the proposed development would not contravene the existing or future land use zoning of the appeal site under the development plan, but I do consider that it would contravene condition no.1 of the permission issued on the site under PL 04.110754 (P.A. Ref. No. 98/41) and the

¹ P.17, Lahinch Settlement Plan, Volume 3d, West Clare Municipal District, Draft Clare County Development Plan 2023-2029.

subsequent extension of duration of this permission issued by the Planning Authority under P.A. Ref. No. 04/1405.

- 7.1.9. In conclusion, I am satisfied that the appeal site formed part of the public open space of the permitted development for 55 houses known as Radharc na Mara. I, therefore, consider that the proposed development of a house on the appeal site would contravene condition no.1 attached to the governing permission and would result in a diminution of the public open space associated with the Radharc na Mara housing development. I recommend that the proposed development be refused on this basis.

7.2. Overlooking

- 7.2.1. As stated earlier in this report, the proposed house is split-level in design facilitated by the slope on the site. The proposed house has a floor area of 146.1m² and a ridge height of 7.561m over finished floor level, with render finish, some stone cladding and black slates / tiles and some zinc / pressed metal cladding on a flat roof section. A landscaping plan is proposed and part of this involves the planting of hedge along the southern site boundary to be maintained at a height that would maintain existing views from Radharc na Mara.
- 7.2.2. The Planning Authority's reasoning for its notification of decision to refuse permission was to protect the amenities of neighbouring houses in Ard na Mara to the northwest of the appeal site. It stated:
- "...having regard to the topography and elevated nature of the site relative to the Ard na Mara estate to the northwest, it considered that the proposed development by reason of its siting and design will overlook the rear private spaces of the dwellings at Ard na Mara, and thus seriously injure the amenities of these properties."
- 7.2.3. The first party includes a shadow study with the appeal confirming that shading won't be an issue and contends that the application was incorrectly adjudicated upon as an amenity space. Each of the observers contend that the proposed development will directly overlook the rear gardens of houses to the northwest of the appeal site.
- 7.2.4. Following my site inspection, I can confirm that overlooking of the rear gardens and private open space of house no.'s 3, 4, 4a and 5 Ard na Mara to the northwest was possible from ground level on the appeal site. The first parties propose a split-level house with a ground floor level of 36.025m OD and an upper floor level of 39m OD.

The proposed ground floor level effectively equates with the existing ground level on the appeal site and would be located approximately 22m from the rear walls of No.'s 4a and 5 Ard na Mara. Three bedrooms, a bathroom and a utility room are proposed at ground floor level, and I consider that overlooking from the proposed windows at ground floor level could be mitigated with a hedge along the northwestern boundary of the appeal site, as the first parties propose.

- 7.2.5. The proposed upper floor level is stated as 9.267m above the finished floor levels of the houses in Ard na Mara. A large living / dining / kitchen area is proposed at upper floor level with extensive glazing on the northwestern elevation and a balcony is proposed along the entire length of the northwestern elevation and part of the southwestern elevation. I understand the first parties reasoning for such a design proposal as this would enable the occupants to take advantage of the views of Lahinch beach and Liscannor Bay to the northwest. However, in so doing, I consider that the proposed house due to this siting and design would give rise to a level of overlooking to the private amenity space of the properties to the northwest of the appeal site that could not be mitigated.
- 7.2.6. I also note the first party's proposal for a hedge along the northwestern boundary comprising a mixture of native species to be maintained at a height as not to interrupt the existing views from the Radharc na Mara housing development. I do not see any merit in such a proposal as the upper level of the proposed house on the appeal site would have a finished floor level equivalent to the finished floor levels of No.'s 47 and 48 Radharc na Mara and, consequently, the proposed house would result in a loss of most, if not all, of the views of Lahinch beach and Liscannor Bay from Radharc na Mara. However, this view is not protected and would not form any part of a reason to refuse the proposed development.
- 7.2.7. On the above basis, I consider that the proposed development due to its siting and design would give rise to an unacceptable level of overlooking of the private amenity space of the properties to the northwest of the appeal site and I consider that this would have a significant negative impact on the residential amenities of these properties. I therefore recommend to the Board that permission should be refused on this basis.

7.3. Other Issues

Stability of Site

- 7.3.1. Two of the observers are concerned that groundworks may have a destabilising effect on the appeal site. I note the concerns raised in this respect however, I am satisfied having regard to the size and stepped nature of the proposal, the amount of excavation work required will be relatively minor and that ground stabilisation works, if required, would be an engineering matter that could be addressed in a construction management plan if the proposed development was to proceed.

Traffic Safety – New Issue

- 7.3.2. I draw the Board's attention to one of the reasons for refusal issued under PL 03.222918 (P.A. Ref. No. 06/1530) for a house at 55A Radharc na Mara where it was considered that the proposed house in close proximity to an existing turning area, by reason of general disturbance and pedestrian / vehicular conflict would fail to provide adequate amenity to future residents and would endanger public safety by reason of traffic hazard.
- 7.3.3. The proposed development under this current appeal is similar in nature insofar as it would be sited approximately 4m to the northwest of a turning area. Although I have similar concerns about pedestrian / vehicular conflict that the proposed house would present at this location, I do not recommend including it as a reason for refusal due to the substantive issues highlighted earlier in this report.

7.4. Appropriate Assessment

Having regard to the nature and scale of the development proposed and the absence of any direct or indirect pathway between the appeal site and any European site and the separation distances to the nearest European site (the Inagh River Estuary SAC (Site code: 000036) and the Cliffs of Moher SPA (Site code: 004005) located approximately 600m to the north and 8.5km to the west, respectively), no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that permission be refused for the reasons stated in the attached schedule.

9.0 Reasons and Considerations

1. The proposed development would be located on an area of public open space within an established residential estate permitted and developed under PL 04.110754. It is considered that the proposed development of a house on this area of public open space would contravene condition no.1 of the parent permission. Consequently, the proposed development would be detrimental to the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.
2. The design and siting of the development would form an overbearing feature when viewed from the rear gardens of the houses to the north-west of the site and would result in the direct overlooking of the private open space associated with these houses. The development would, therefore, seriously injure the amenities of adjoining residential properties by means of overlooking and would be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Senior Planning Inspector

6th April 2023